

## § 159.10

## 12 CFR Ch. I (1–1–12 Edition)

your total capital, as described in part 167 of this chapter.

(2) The OCC may limit the amount of loans to a GAAP-consolidated subsidiary, or may adjust the limits set forth in paragraph (b)(1) of this section where safety and soundness considerations warrant such action.

(c) For purposes of this section, the terms “loans” and “obligations” include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

### **§ 159.10 How must separate corporate identities be maintained?**

(a) Each Federal savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OCC regulations that apply both to Federal savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

### **§ 159.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?**

When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association (“you”) must file a notice (“Notice”) under part 116, subpart A of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activi-

ties in a subsidiary. The Notice should be filed with the appropriate OCC licensing office and must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. Providing the OCC with a copy of the notice you file with the FDIC will satisfy this requirement. If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC’s prior written approval under the standard treatment processing procedures at part 116, subpart A and E of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

### **§ 159.12 How may a subsidiary of a Federal savings association issue securities?**

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent Federal savings association (“you”) may issue. The subsidiary must not state or imply that the securities it issues are covered by Federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with the appropriate OCC licensing office in accordance with § 159.11 of this part at least 30 days before your first issuance of any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If the OCC notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive the OCC’s prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance,